

BABERGH DISTRICT COUNCIL

NATURAL AND BUILT ENVIRONMENT

GENERAL ENFORCEMENT POLICY

1. Objectives and Scope

- 1.1 It is the policy of Babergh District Council to ensure that enforcement of statutory requirements is undertaken in accordance with enforcement techniques which are:-
- (a) consistent with current statutory and professional guidance, including the Regulators Compliance Code, the Police and Criminal Evidence Act, the Criminal Procedures and Investigations Act, the Regulation of Investigatory Powers Act, the Race Relations Act and the Human Rights Act.
 - (b) fair;
 - (c) open;
 - (d) sensitive;
 - (e) in accordance with the principles of common sense;
 - (f) related to the risks posed by non-compliance;
 - (g) consistent both within the area of the Council and adjoining authorities.
- 1.2 This policy applies to all enforcement activities undertaken by the service. This Policy is to be read in conjunction with other subject specific Enforcement Policies (For example, the Health and Safety Enforcement Policy and the Food Service Enforcement Policy). In this policy the following definitions apply:-
- “Enforcement” means any action taken at any time to redress a deficiency in meeting an express or implied legal requirement.
- “Formal” means following a prescribed statutory or legal process, and "informal" is to be construed from that definition.
- “Officer” means any employee or agent of the Council whose duties include enforcement.
- All enforcement activities will be undertaken by appropriately qualified and authorised officers.
- 1.3 From time to time the Council may consult stakeholders, businesses, or any group which may be affected by the terms of this policy, to determine if the policy is still relevant and effective or if any alterations are required. Such consultation shall take place by means appropriate to the demand.

2. Implementation of Policy

- 2.1 All officers involved in the enforcement process will follow this policy.
- 2.2** The Head of Service will seek and obtain approval of the policy by elected members; secure any necessary delegated authority; and appoint and authorise suitable officers.
- 2.3 Each manager of a team or division within the section shall identify training needs of individual officers, and make the necessary arrangements for officer training. They will also give professional guidance on work techniques and decision making.

- 2.4 All authorised officers are to make themselves fully acquainted with the requirements of this policy, and will abide by its terms when making enforcement decisions. If a situation arises where it is more appropriate not to follow this policy the officer concerned will be expected to demonstrate to a team manager that the circumstances are significant and exceptional.
- 2.5 All officers will receive a copy of this policy, and are expected to make themselves fully acquainted with its terms.
- 2.6 All officers shall receive a document specifying the duties they undertake, and shall keep it available for presentation at all times. They shall be responsible for its safekeeping.
- 2.7 Where a shared enforcement role exists (for example in relation to certain food functions with the County Council), appropriate liaison shall be undertaken to ensure consistency of action and to avoid duplication of effort.
- 2.8 The Council confirms that it accepted the provisions of the Regulators Compliance Code on the 6th of April 2008.

3. Enforcement Options

- 3.1 Officers will select the most appropriate enforcement procedure to take after having considered all the issues in the case. Each case will be considered against the following hierarchy of enforcement measures.
- 3.2 Enforcement decisions will be consistent balanced fair and relate to standards that ensure the public or the environment is properly protected. The criteria to be considered will include:-
 - (a) the seriousness of the offence;
 - (b) the history of the activity;
 - (c) confidence in achieving compliance;
 - (d) the consequences of non-compliance; and
 - (e) the likely effectiveness of the various enforcement options;
 - (f) the results of any liaison with lead or home authorities for the business involved.
- 3.3 After consideration of the criteria the following options are available:-
 - (a) to take no action;
 - (b) to take informal action (i.e. by verbal notice, letter, fax, e-mail or other non-statutory means);
 - (c) to use formal notification procedures as in the case of asbestos removal etc;
 - (d) to serve statutory notices (where required by statute preceded by any necessary "Minded to" notices);
 - (e) to issue simple cautions;
 - (f) to suspend, revoke or refuse to grant or renew a licence;
 - (g) to impose an administrative penalty;
 - (h) to prosecute or apply for a Court Order.

A staged approach to enforcement should always be adopted, and persons or businesses should be given the opportunity to discuss and remedy problems before action is taken, unless circumstances require immediate action, for example to secure public safety or health. Whenever necessary a professional translation service will be employed.

- 3.4 Informal action will be taken when:-
 - (a) the act or omission is not serious enough to warrant formal action;
 - (b) having regard to past history it can be reasonably expected that informal action will secure compliance;
 - (c) confidence in the individual or business manager is high;

- (d) the consequences of non-compliance will not pose a significant risk to public health, public safety, or the environment.

When an informal approach is used, confirmation of what is required must be in writing. All correspondence must distinguish between legal requirements and recommendations of good practice.

3.5 Statutory Notices (which term includes Prohibition Notices) will be served when one or more of the following criteria apply:

- (a) where there is a legal duty to do so;
- (b) there are significant contraventions of legislation;
- (c) there is a lack of confidence in the person or business to respond to informal action;
- (d) there is a history of non-compliance;
- (e) standards are generally poor, with little awareness or concern of statutory duties;
- (f) the consequences of non-compliance could have serious implications for public health, safety, and welfare, or cause a nuisance, or be irreversible;
- (g) where the service of a notice is needed to support a prosecution.

Failure to comply with a statutory notice will in general lead to prosecution and/or works being carried out in default. With regard to the non-payment of fixed penalty notices, issued for 'environmental crimes', the decision whether to prosecute for non-payment will be made in accordance with the Council's Clean Neighbourhoods and Environmental Enforcement Strategy, 2007.

3.6 A simple caution may be offered as an alternative to prosecution. A simple caution may be offered:-

- (a) if the offence is a first offence;
- (b) if the offence is of a minor or technical nature;
- (c) or is not sufficiently serious to proceed to court;

but in every instance the case could be proved in court. The simple caution will be administered by the Head of Service or by the team manager.

3.7 The recommendation to pursue a prosecution will be made by an authorised officer after consultation with the team manager and the Head of Service. The Council's Solicitor will be consulted on the quality and adequacy of evidence and other legal issues raised using the Charging Decision form ES GN 68. Criteria for the issue of proceedings include:-

- (a) the alleged offence involves a flagrant breach of the law such that public health safety or welfare is or has been put at risk or irreversible damage has resulted;
- (b) there has been a reckless disregard for the environment;
- (c) the alleged offence involves deception which may or may not result in loss or potential loss to public funds;
- (d) the integrity of any licensing activity is threatened;
- (e) the alleged offence involves a failure to correct an identified serious potential risk having been given a reasonable opportunity to do so by an officer;
- (f) the alleged offence involves a failure to comply either in part or in full with the requirements of a statutory notice;
- (g) there is a history of similar offences;
- (h) a simple caution has been offered and refused;
- (i) the prosecution is in the public interest, and it is desirable to reassure the public or deter other offenders.

All prosecutions will be conducted in accordance with normal legal procedures, including the Code of Practice for Crown Prosecutors, and will take account of the Police and Criminal Evidence Act, the Criminal Procedures and Investigations Act, the Regulation of Investigatory Powers Act, the Race Relations Act and the Human Rights Act. All relevant evidence will be considered, and there will be a realistic prospect of obtaining a conviction.

- 3.8 As a general rule prosecutions will not be instituted without due warning, but they may be undertaken in the following circumstances:-
- (a) the contravention of the law is particularly serious, or there has been a particularly blatant disregard of the law;
 - (b) a statutory notice has been issued in respect of a previous offence; or
 - (c) the integrity of the Council's enforcement activities is threatened.

4. Monitoring and Review

- 4.1 This policy will be monitored and reviewed by the Head of Service and team managers in the course of their line management supervision. Any non-compliance with the policy will be discussed with the officer concerned to determine the reasons, and a review of records and correspondence undertaken.
- 4.2 Any person who feels aggrieved about the implementation of the policy or about any matter regulated by it may seek in writing to have the matter investigated as above. If the response is considered to be inadequate, then the complainant may follow the procedures set out in the guide to making a complaint – “Don't Be Afraid To Complain”
- 4.3 Persistent non-compliance with the policy by an officer may be a disciplinary matter.